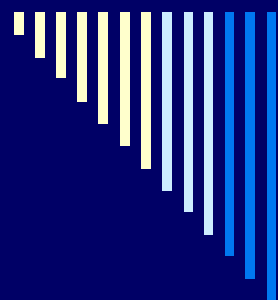


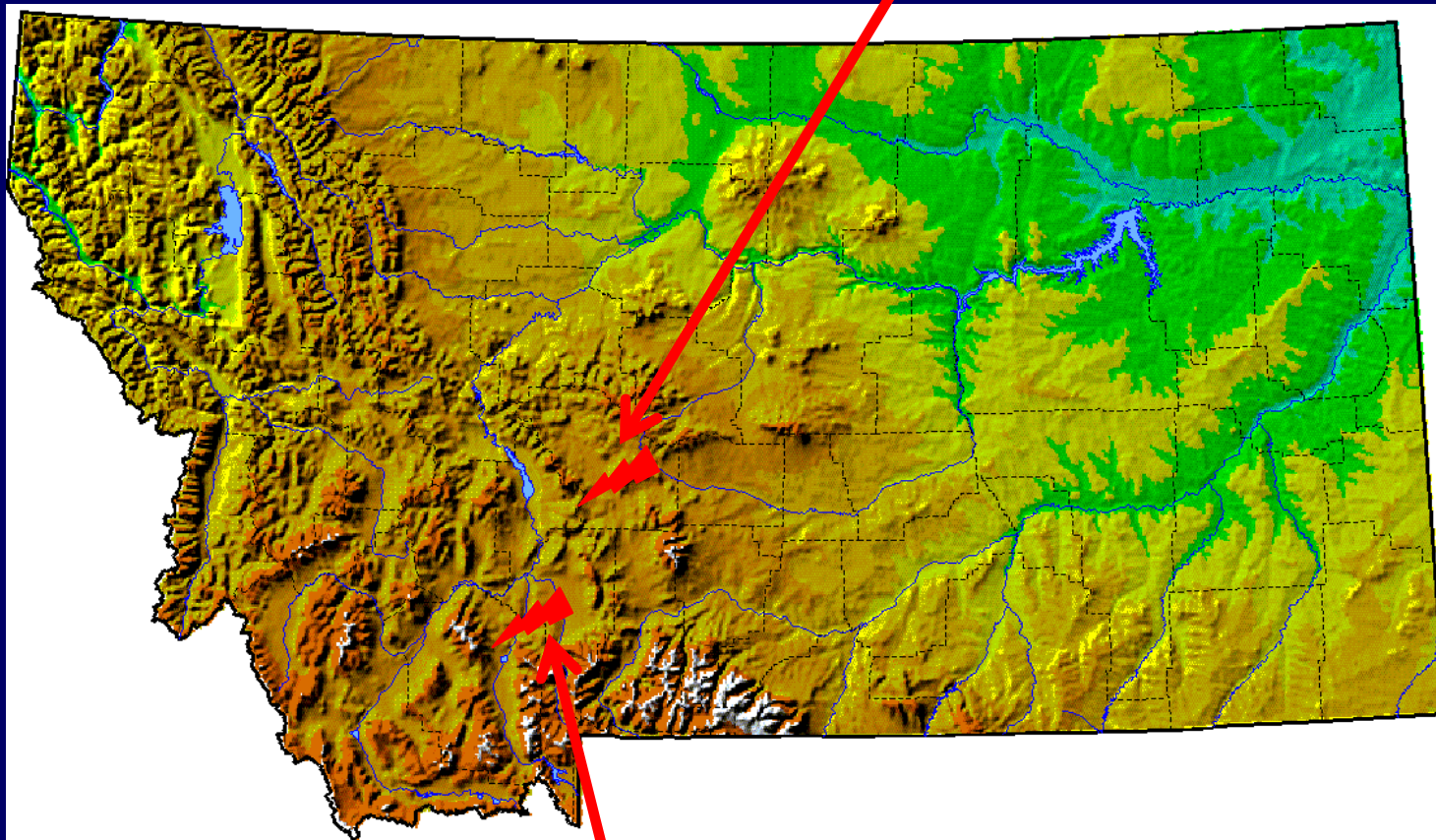
Surface & Ground Water
Managing a Connected Resource

Environmental Quality Council
DNRC Director Mary Sexton
January 26, 2006

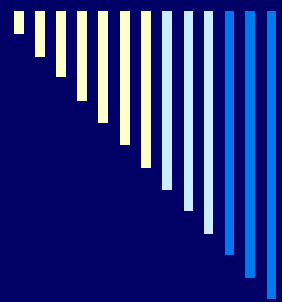


The Existing Debate:

Smith River Applications



Gallatin River Basin Applications



The Setting in Spring '05

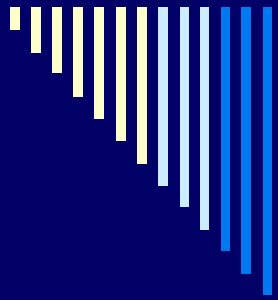
- Legislatively “Closed Basins”
 - Upper Missouri,
 - Teton
 - Madison / Jefferson River Basin, and
 - Upper Clark Fork Basin
 - Ground water is open to appropriation in closed basins.
 - Open means that one can apply for a new ground water use. application
 - Requirements of permitting process unchanged.
 - However, appropriable ground water means
 - to be weakly connect or “de minimus” in its relationship.
-



Defining related Ground Water

- "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and *that is **not immediately or directly connected to surface water.***
 - (From Upper Missouri, Teton and Madison / Jefferson River Basin Closures.)

 - “the source of the ground water is not a part of or substantially or directly connected to surface water.”
 - (From the Upper Clark Fork River Basin Closure.)
-

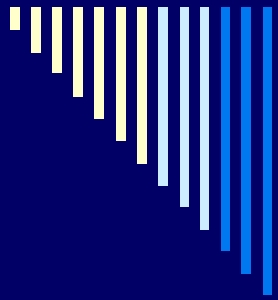


Ground Water / Surface Water

Policy vs. Science

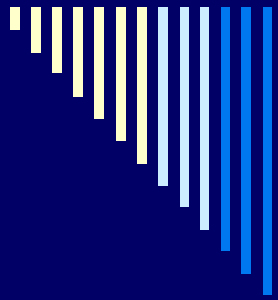
□ Science says

- Surface and ground water are connected,
- Withdrawing ground water can diminish surface water,
- Effects of withdrawals may be local or regional,
- Effects of individual or small numbers of wells are difficult to observe and
- Interaction controlled by local conditions and changes to those conditions.



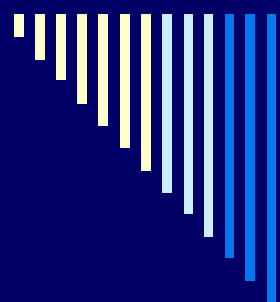
Ground Water / Surface Water Policy vs. Science

- Montana Water Policy says
 - a weak linkage that is interpreted as no affect
 - no cumulative assessment required either.



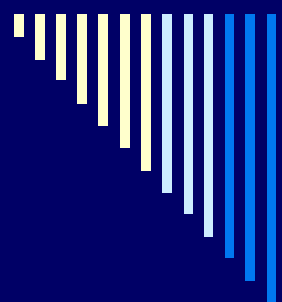
Round Table – May 25, 2005

- DNRC Director Hosted Listening sessions.
- Invited participants
- Identify key issues from dialog
- Surface Water / Ground Water
 - One of the identified issues.
 - An identified group of affected and interested stakeholders.



Ground Water / Surface Water Work Group

- First meeting July 25, 2005
- Formed around volunteers from
 - Round table dialog
 - Invited Stakeholders, and
 - Interests who requested to participate.
- Five Work Group meetings to date.
- Numerous subcommittee drafting / brainstorming sessions.



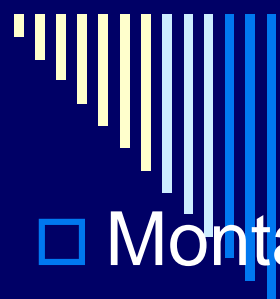
Surface Water / Groundwater Task Force

- ❑ Created out of Director's Roundtable Group, May 25
- ❑ Stakeholder Groups identified & contacted
- ❑ Task Force convenes July 25
- ❑ Charge of Task Force is broad



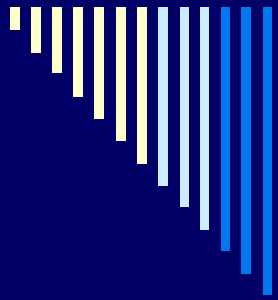
Task Force Membership

- Montana Building Association – Michael Kakuk
- MT Association of Realtors – Glenn Oppel
- MT Water Resources Assn. – Mike Murphy
- Trout Unlimited – Stan Bradshaw, John Wilson
- MT Stockgrowers Association – Jay Bodner
- MT Rural Water – Kristi Kline, Bill O'Connell
- Montana Farm Bureau – John Youngberg
- Gallatin Irrigators – Walt Sales, Mick Seeburg
- Friends of Wild Swan – Steve Kelly



Membership (cont.)

- Montana FWP – Bill Schenk
- MACD – Steve Merritt, Sarah Carlson
- DNRC, Chief Legal Counsel – Tim Hall
- DNRC, Water Resources – Jack Stults, Admin.
- Water Rights Bureau Chief Terri McLaughlin
- Consultant – Rick Bondy, P.E.
- MDT Wetlands – Lawrence Urban
- PPL Montana – Holly Franz, Franz & Driscoll, PLLP
- Montanans for Smart Growth – Tim Davis
- Montana DEQ, Subdivisions – Steve Kilbreath



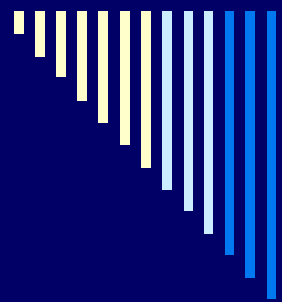
Technical Support Members

- MT Bureau Mines & Geology - Tom Patton
- DNRC Hydrogeologist – Bill Uthman
- DNRC Hydrogeologist – Russell Levens
- DNRC Water Rights, Bozeman – Scott Compton



Montana Water Law

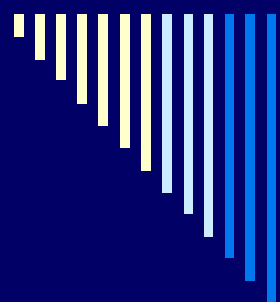
A 10 minute over view



Constitutional provisions.

- *All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.*
- *The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.*

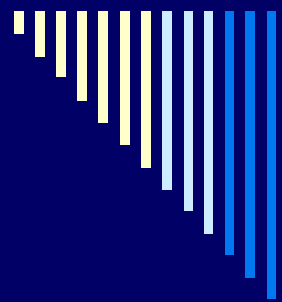
Article IX, Section 3, parts 3 and 4,



Water

Means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water diffuse surface water and sewage effluent.

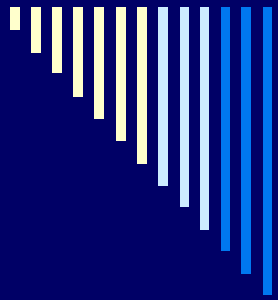
Montana Water Use Act
85-2-102 (20) MCA 2005



A Unitary Water Right System

- After July 1, 1973, a person may not appropriate water except as provided in this chapter.
 - (Note no differentiation made between sw / gw.)
- A right to appropriate water may not be acquired by any other method, including adverse use, adviser possession, prescription or estoppel. The method prescribed by this statute is exclusive.

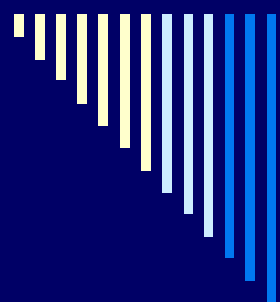
□ Montana Water Use Act, 85-2-301 MCA 2005



Providing Water for a New or Future Project

Multiple options including:

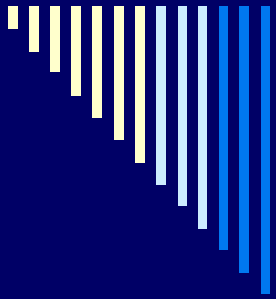
- Permitting (New Water Rights)
- Changes to Old Water Rights (Reallocation)
- Temporary Changes,
Water leasing, &
Salvage
- Water Reservations (Public water supplies)



Getting a New Water Right

- ❑ Must apply for & receive a permit from DNRC.
- ❑ Must apply before development.

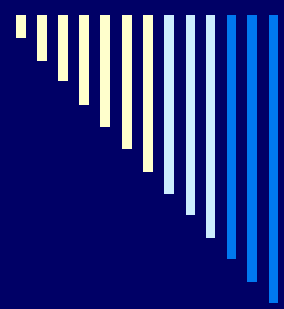
85-2-301 MCA 2001



“To every rule there is an Exception!”

- The legislature, as a matter of policy, identified certain uses of water that can acquire a water right outside of the water right permitting process.
- These “exemptions” are for stock water and certain “small” ground water developments.

85-2-306 MCA 2001




Permit Process Exemptions: Small Wells

- ☐ Any use
- ☐ Withdraw less than 35 gpm,
- ☐ Withdraw less than 10 acre ft/year



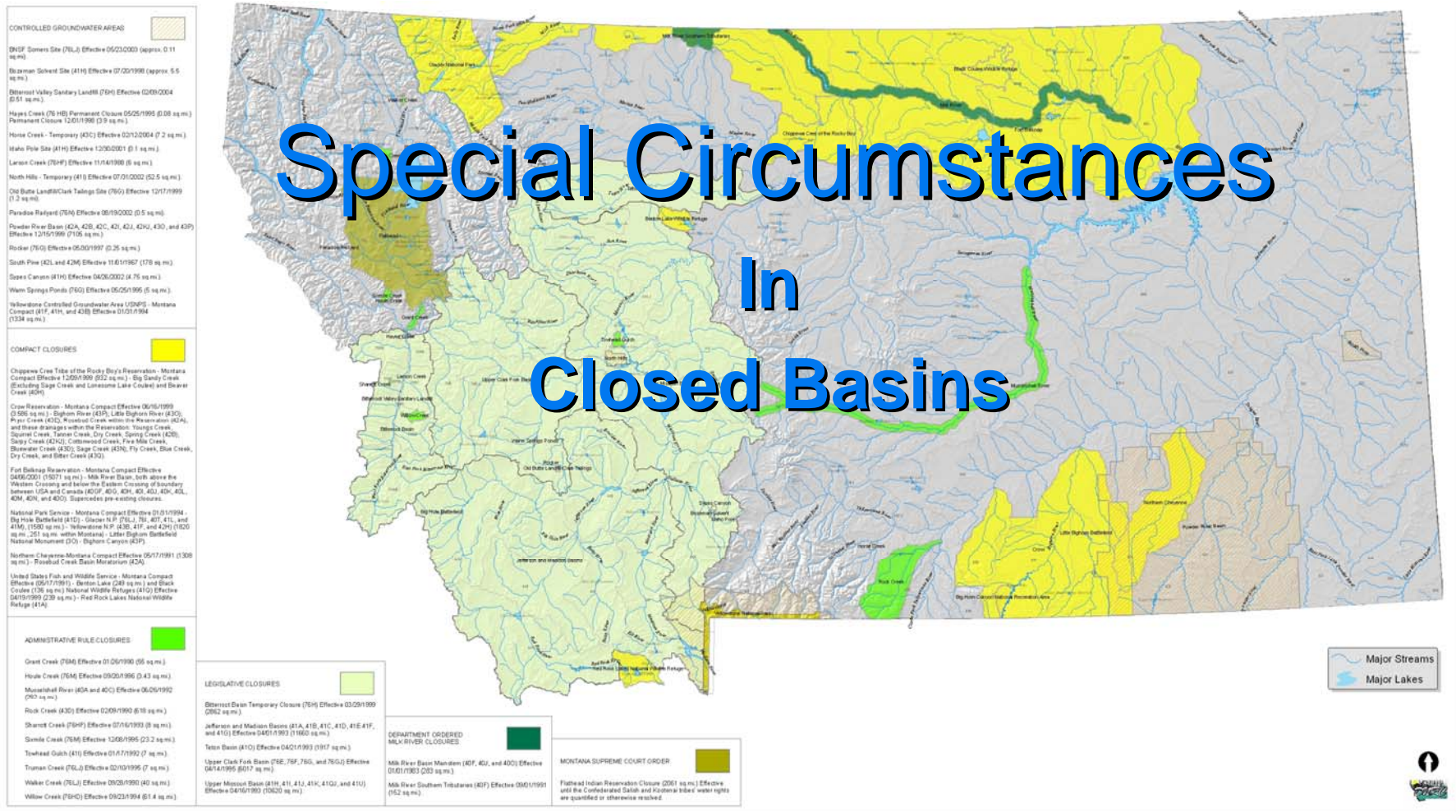
Permit Process Exemptions: Stock water

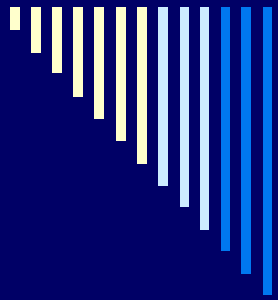
- Only Stock water,
 - Water must be supplied from a source other than a perennial stream,
 - Limited to stock water pits & reservoirs
- 
- Reservoir capacity must be less than 15 acre feet,
 - Total appropriation less than 30 acre feet per year,
 - Located on a parcel of at least 40 acres in size.

Montana Surface Water Closures, Compacts, and Controlled Groundwater Areas

March 2004

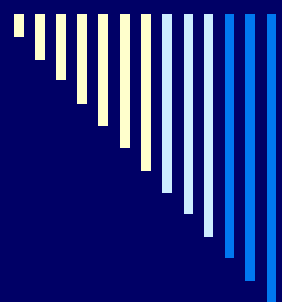
Special Circumstances In Closed Basins





Basin Closures

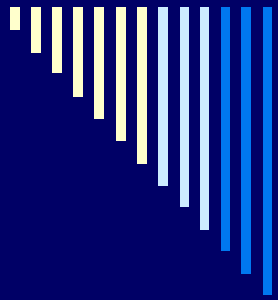
- The Basin closure typically limits only Permits and, sometimes, Water Reservations.
- The Focus is on limiting new water rights from ***surface water*** supplies affecting;
 - Streams
 - Rivers
 - Lakes and often
 - Ground water that affects surface water.



Exemptions to the Closure

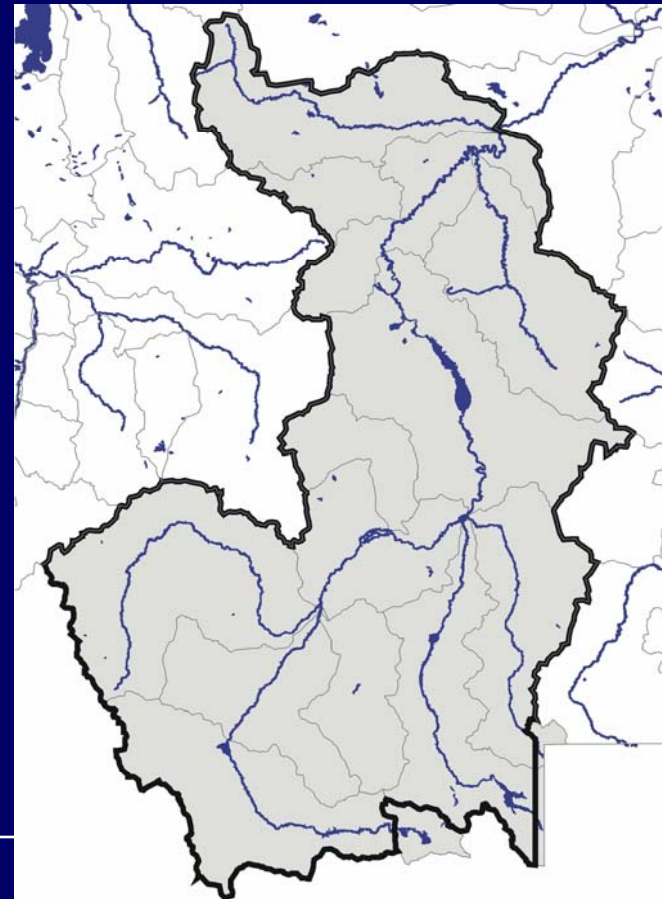
- Certain uses, often specific to the basin, were exempt from the closure.

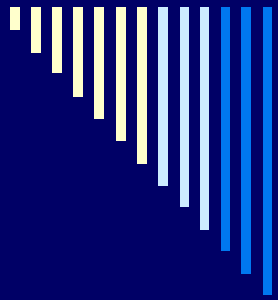
- Common exemptions included
 - Surface water for stock
 - Storage of surface water during high spring flows
 - Surface water
 - All Ground Water



Legislative Closure: Upper Missouri

- ❑ Closes the basin to new surface water right permits.
- ❑ Temporary closure
- ❑ Exemptions:
 - Ground water
 - Non-consumptive uses
 - Domestic, stock & municipal uses
 - Storage of High Spring Flows
 - Muddy Creek erosion control projects





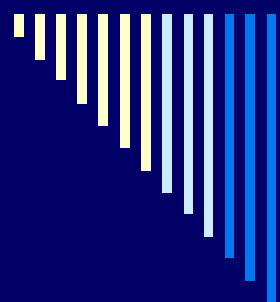
Back to Ground Water

Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and *that is not immediately or directly connected to surface water.*"



Surface Water / Ground Water Work Group

Deliberations Thus Far



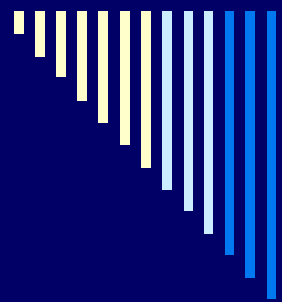
Task Force Process

- Identify and rank issues
- Identify & invite appropriate speakers
- Research GW policy of other states
- Present research findings to Task Force
- Facilitate discussion among stakeholders
- Develop consensus-based recommendations



Concerns Identified

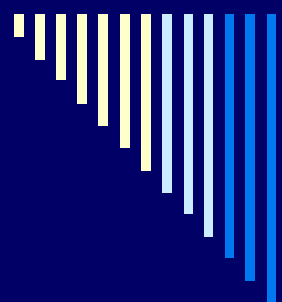
- ❑ Protection of senior surface water rights from effects of ground water development.
 - ❑ Administration of ground water rights under the same listing of priorities as related surface water rights.
 - ❑ Increase in volume of complaints related to subdivision GW exemptions
 - ❑ Cumulative effects of GW well densities
 - ❑ Shift to ground water for new water projects.
 - ❑ Growth, land use changes, and related subdivision placing and increased demand on ground water.
 - ❑ Ambiguity and variation in statutory language among basin closure laws
-



Concepts:

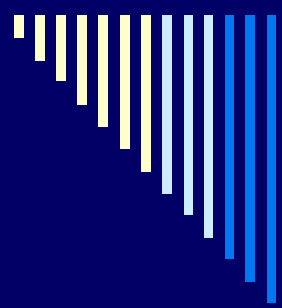
Appropriation in Closed Basins

1. Ground Water should remain open to appropriation.
2. Should recognize that virtually all appropriations have some element of consumption and impact on surface water.
3. Hydrologic Report to accompany new permit applications
4. Report should address hydrologic connections between source of GW and SW.
5. Report should identify depletions created by new use.
6. Depletions to surface water should be mitigated.
7. Eliminate ambiguous language such as “substantially connected” and “immediate or direct.”



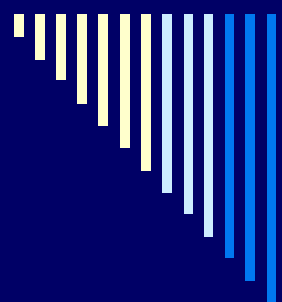
Concepts: Augmentation in Closed Basins

1. Require Augmentation / Augmentation Plan for all new ground water developments
2. Augmentation should mitigate for ALL depletions caused by a new ground water use.
3. Augmentation to address amount, location, & timing of replacement water to offset depletions.
4. Augmentation in closed basins should address;
 - “adverse effects,” and
 - depletions.



Concept: Statutory amendments in Closed Basins

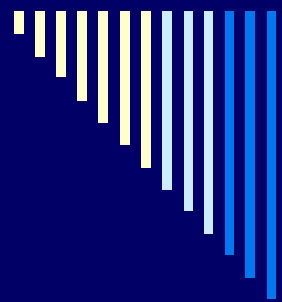
- Priority recommendations
 1. Eliminate ambiguous language such as “substantially connected” and “immediate or direct.”
 2. Eliminate exemptions that allow new surface water developments for domestic, public water supply and municipal uses.
 - (Ground water appropriations and water transfers or storage for these uses still allowable.)
- Review other exemptions
 - Maintain storage but make uniform (high spring flows & > 50 ac. ft)
 - Consider elimination of Non-consumptive exemption
 - Add exemption for statutorily required wetland and stream mitigation projects.



Concept

Defining Augmentation

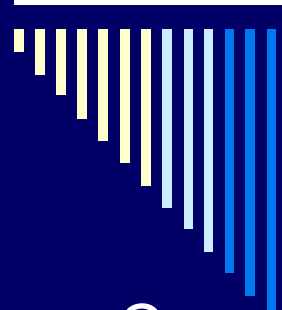
- Develop a statutory definition for Augmentation in the Water Use Act that applies statewide.
 - Augmentation is to increase the supply of water available (legally) for use
 - May develop new or alternative water supplies
 - May use and change existing water rights
 - May use existing or new storage
 - Augmentation, outside of closed basins should prevent adverse typically by mitigating depletions or both.
 - Processes for augmentation should be broadly defined.
 - Department should be flexible in review of augmentation proposals, allowing for creativity.
-



Concept: Exemptions to Permit Process

(Small well exemption – under 35 gpm and 10 acre feet / year.)

1. Maintain existing ground water exemptions for stock water.
2. Maintain existing exemption for ground water WELL used for domestic / culinary uses
(Would apply to the first 5 lots of a subdivision and all pre existing and currently plated subdivisions.)
3. Eliminate exemption for other ground water developments
 - ❑ Examples: ground water ponds, wells to fill ponds, industrial uses etc.
 - ❑ Water for these use would be acquired through the permit process.
4. Create a new “ministerial” process for subdivisions.



Concept: Exemptions to Permit Process (continued)

☐ Concerns

- ☐ Cumulative effects of high concentration of GW wells related subdivision and the affect those wells have on surface water supplies.

- ☐ Industry that is not now regulated by permit process wish to remain unregulated.

☐ Ministerial process for Subdivision Wells

- ☐ Would be when ever there are more than 6 wells in a subdivisions. (all subsequent minors and all major subdivisions)

- ☐ Augmentation would be require in both closed and non-closed basins to new permitting
